IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Bail Appl..No. 7813 of 2007()

CP.60/2006 of J.M.F.C.,KUNNAMKULAM
CRIME NO.49/01 OF VADAKKEKAD POLICE STATION

.....

: PETITIONER/ACCUSED 5 & 6

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1. SABEEL, S/O MUHAMMADALI,
   AGED 25 YEARS, MADAPPAN HOUSE,
   PUNNYOORKULAM VILLAGE, ANDATHODE BEACH.

2. SALEEM, S/O MUHAMMADALI,
   AGED 24 YEARS, MADAPPAN HOUSE,
   PUNNAYOORKULAM VILLAGE, ANDATHODE BEACH.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
(THE SUB INSPECTOR OF POLICE, VADAKKEKAD POLICE STATION, CRIME NO.49/2001)REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7813 of 2007

Dated this the 19th day of December, 2007

ORDER

Application for anticipatory bail. Petitioners face indictment in a prosecution for offences punishable, inter alia, under Sections 326 and 307 I.P.C. The petitioners, it is submitted, were enlarged on bail at the crime stage. Investigation is complete. Final report has been filed. Cognizance has been taken. Committal proceedings has been registered before the learned Magistrate. But the petitioners did not appear before the learned Magistrate. Reckoning them as absconding accused, coercive processes have been issued against the petitioners by the learned Magistrate. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They had no knowledge of the proceedings. Their absence was not wilful or deliberate. They are willing to surrender before the learned Magistrate. But they apprehend that their application for regular bail may not be

considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioners, in these circumstances, have come before this Court for issue of appropriate directions under Section 438 and/or 482 Cr.P.C in their favour.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do

the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-